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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/748,646	12/29/2003	Todd C. Larson	19,065.1	6910

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KIMBERLY-CLARK WORLDWIDE, INC.
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EXAMINER

CRAIG, PAULA L

ART UNIT	PAPER NUMBER
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3761

DATE MAILED: 03/16/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/748,646

Applicant(s)

LARSON ET AL.

Examiner

Paula L. Craig

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 29 December 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-23 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-23 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 29 December 2003 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <p>1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)</p> <p>2) <input checked="" type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)</p> <p>3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>5/17/04 11/19/04</u> 12/10/04</p> | <p>4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____</p> <p>5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)</p> <p>6) <input type="checkbox"/> Other: _____</p> |
|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|

DETAILED ACTION

Drawings

1. The drawings are objected to because of the informalities listed on the enclosed Form PTO-948. Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Claim Rejections - 35 USC § 103

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

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(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148

USPQ 459 (1966), that are applied for establishing a background for determining

obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

4. Claims 1-3, 9-13, 18-20, and 22 are rejected under 35 U.S.C. 103(a) as obvious over U.S. Patent Application Publication No. 2003/0225386 to Rodriguez.

5. For Claim 1, Rodriguez teaches an absorbent article including an outercover defining an interior surface and an exterior surface opposite the interior surface (Figs. 1-3 and paragraphs 2 and 13). An absorbent body is disposed on the interior surface (Figs. 1-3 and paragraphs 13-14). Rodriguez teaches a non-photoluminescent graphic disposed on the outercover (reflective substance, paragraphs 37, 39, and 43).

Rodriguez teaches a photoluminescent graphic disposed on the outercover (phosphorescent or fluorescent substance, Figs. 1-3 and paragraphs 37-43). Rodriguez teaches that the surface of the absorbent article may be fully illuminative or partially illuminative (paragraph 5). The photoluminescent graphic of Rodriguez is indicated as being suitable for entertaining children or assisting caregivers under low light conditions (paragraph 5). Rodriguez teaches that the photoluminescent material may be applied at

various brightnesses and levels (paragraph 40). Rodriguez does **not** expressly teach the photoluminescent graphic defining a photoluminescent graphic area that is at least 10 square cm and has a glow intensity of at least 0.5 lux at 60 seconds as determined by a Glow Intensity Test. As to the graphic area, the area of photoluminescent graphic is a result effective variable, since it affects the visibility of the graphic under low light conditions. The discovery of an optimum value of a result effective variable is ordinarily within the ordinary skill in the art. See *In re Boesch and Slaney*, 205 USPQ 215 (CCPA 1980). As to the glow intensity, Applicant's specification indicates that a suitable photoluminescent substance for the photoluminescent graphic is zinc sulfide (specification, paragraph 64). Zinc sulfide or sulphide is specified in Rodriguez as a suitable luminescent substance (paragraph 39). Absent evidence to the contrary, the article of Rodriguez is presumed to have the claimed glow intensity values, since the materials are substantially identical. See *In re Boesch and Slaney*, 205 USPQ 215 (CCPA 1980), and *In re Spada* 15 USPQ2d 1655 (CAFC 1990).

6. For Claim 18, Rodriguez teaches an absorbent article including an outercover defining an interior surface and an exterior surface opposite the interior surface (Figs. 1-3 and paragraphs 2 and 13). An absorbent body is disposed on the interior surface (Figs. 1-3 and paragraphs 13-14). Rodriguez teaches a plurality of non-photoluminescent graphics disposed on the outercover (reflective substance, paragraphs 37, 39, and 43). Rodriguez teaches a photoluminescent graphic disposed on the outercover (phosphorescent or fluorescent substance, Figs. 1-3 and paragraphs 37-43). Rodriguez teaches that the surface of the absorbent article may be fully

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illuminative or partially illuminative (paragraph 5). Rodriguez teaches a graphic defining a graphic theme, with the photoluminescent graphic being related to the graphic theme (paragraph 43). The photoluminescent graphic of Rodriguez is indicated as being suitable for entertaining children or assisting caregivers under low light conditions (paragraph 5). Rodriguez also teaches graphics that vary in the application of illuminative substance (paragraph 40). Rodriguez teaches graphics that vary in their appearance according to the light level (as with the open/closed animal eyes giving the appearance of movement, paragraph 43). Rodriguez does not expressly teach that the graphics defining the graphic theme are non-photoluminescent. It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the article of Rodriguez for one of the graphics defining the graphic theme to be non-photoluminescent, to provide the appearance of movement or the like.

7. For Claim 22, Rodriguez teaches an absorbent article including an outercover defining an interior surface and an exterior surface opposite the interior surface (Figs. 1-3 and paragraphs 2 and 13). An absorbent body is disposed on the interior surface (Figs. 1-3 and paragraphs 13-14). Rodriguez teaches a plurality of non-photoluminescent graphics disposed on the outercover (reflective substance, paragraphs 37, 39, and 43). Rodriguez teaches a photoluminescent graphic disposed on the outercover (phosphorescent or fluorescent substance, Figs. 1-3 and paragraphs 37-43). Rodriguez teaches the photoluminescent graphic defining a photoluminescent graphic area (Fig. 2). Rodriguez teaches that the surface of the absorbent article may be fully illuminative or partially illuminative (paragraph 5). Rodriguez teaches a graphic

defining a graphic theme, with the photoluminescent graphic being related to the graphic theme (paragraph 43). The photoluminescent graphic of Rodriguez is indicated as being suitable for entertaining children or assisting caregivers under low light conditions (paragraph 5). Rodriguez also teaches graphics that vary in the application of illuminative substance (paragraph 40). Rodriguez teaches graphics that vary in their appearance according to the light level (as with the open/closed animal eyes giving the appearance of movement, paragraph 43). Rodriguez does not expressly teach that the graphics defining the graphic theme are non-photoluminescent. Rodriguez also does not expressly teach the photoluminescent graphic area being at least 10 square cm, or having a glow intensity of 0.5 lux at 60 seconds. It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the article of Rodriguez for the graphics defining the graphic theme to be non-photoluminescent, to provide the appearance of movement or the like. It would also have been obvious to modify Rodriguez to include the photoluminescent graphic area being at least 10 square cm and a glow intensity of 0.5 lux at 60 seconds, for the same reasons as described above for Claim 1 in paragraph 5.

8. For Claim 2, Rodriguez teaches a graphic defining a graphic theme, with the photoluminescent graphic being related to the graphic theme (paragraph 43). Rodriguez does not expressly teach that the graphic defining the graphic theme is non-photoluminescent. However, Rodriguez teaches both photoluminescent and non-photoluminescent graphics, as described above for Claim 1 in paragraph 5. Rodriguez also teaches graphics that vary in the application of illuminative substance (paragraph

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40). Rodriguez teaches graphics that vary in their appearance according to the light level (as with the open/closed animal eyes giving the appearance of movement, paragraph 43). It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the article of Rodriguez for one of the graphics defining the graphic theme to be non-photoluminescent, to provide the appearance of movement or the like.

9. For Claim 3, Rodriguez teaches non-photoluminescent and photoluminescent graphics, as described above for Claim 1 in paragraph 5. Rodriguez also teaches a graphic theme (Fig. 2 and paragraph 43). Rodriguez teaches that the photoluminescent graphics may relate to the fastening tabs, the leg cuffs, or other locations that assist in fastening the article; this use is unrelated to the graphic themes taught by Rodriguez such as the open/closed animal eyes (paragraphs 38 and 43). Rodriguez does not expressly teach that the graphic defining the graphic theme is non-photoluminescent while the photoluminescent graphics are unrelated. However, it would be obvious to one of ordinary skill in the art to modify Rodriguez to include the non-photoluminescent graphic defining a graphic theme, and the photoluminescent graphic being unrelated, such as to assist in fastening.

10. For Claim 9, Rodriguez teaches the photoluminescent graphic being phosphorescent (paragraphs 37 and 40).

11. For Claims 10, 11, and 19, Rodriguez does not expressly teach the photoluminescent graphic defining a photoluminescent graphic area that is at least 10, 20, or 40 square cm. The area of photoluminescent graphic is a result effective

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variable, since it affects the visibility of the graphic under low light conditions, as described above for Claim 1 in paragraph 5. The discovery of an optimum value of a result effective variable is ordinarily within the ordinary skill in the art.

12. For Claims 12, 13, and 20, Rodriguez does not expressly teach the photoluminescent graphic having a glow intensity of at least 0.5, 0.75 or 0.95 lux at 60 seconds as determined by a Glow Intensity Test. However, such values are considered to be inherent in Rodriguez, for the same reasons as described above for Claim 1 in paragraph 5.

13. Claims 4-8, 14-17, 21, and 23 are rejected under 35 U.S.C. 103(a) as obvious over Rodriguez in view of U.S. Patent No. 5,599,048 to Schioler.

14. For Claim 4, Rodriguez teaches all the limitations of Claim 1, as described above in paragraph 5. Rodriguez teaches photoluminescent graphics with illuminative designs or indicia (paragraph 5). Rodriguez teaches various photoluminescent graphics, including one of an animal eye that appears closed in daylight conditions and open in low light conditions (paragraphs 38 and 43). Rodriguez does not expressly teach the photoluminescent graphic being a substantially solid silhouette of at least a portion of the non-photoluminescent graphic. However, having a photoluminescent graphic be a substantially solid silhouette of at least a portion of the non-photoluminescent graphic is well known in the art of photoluminescent graphics. Schioler confirms this and teaches a photoluminescent graphic which is a substantially solid silhouette of at least a portion of a non-photoluminescent graphic (col. 3, line 65 to col. 4, line 26). Schioler indicates

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that this provides for interesting and attractive effects, such as the appearance of eyes, and enhances enjoyment for children (col. 1, lines 5-12, and col. 4, lines 1-26). It would have been obvious to one of ordinary skill in the art to modify Rodriguez to include a photoluminescent graphic which is a substantially solid silhouette of at least a portion of the non-photoluminescent graphic, as taught by Schioler, to provide an interesting and attractive effect.

15. For Claim 5, Rodriguez teaches all the limitations of Claim 1, as described above in paragraph 5. Rodriguez teaches photoluminescent graphics with illuminative designs or indicia (paragraph 5). Rodriguez teaches various photoluminescent graphics, including one of an animal eye that appears closed in daylight conditions and open in low light conditions (paragraphs 38 and 43). Rodriguez does not expressly teach the photoluminescent graphic being an outline of at least a portion of the non-photoluminescent graphic. However, having a photoluminescent graphic be an outline of at least a portion of a non-photoluminescent graphic is well known in the art of photoluminescent graphics. Schioler confirms this and teaches a photoluminescent graphic which is an outline of at least a portion of a non-photoluminescent graphic (col. 3, lines 57-64). It would have been obvious to one of ordinary skill in the art to modify Rodriguez to include a photoluminescent graphic which is an outline of at least a portion of the non-photoluminescent graphic, as taught by Schioler, for the same reasons as described above for Claim 4 in paragraph 14.

16. For Claim 6, Rodriguez does not expressly teach an outline or an outline thickness. Schioler teaches an outline, as described above for Claim 5 in paragraph 15.

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Schioler teaches the use of an outline to produce interesting and attractive effects (col. 3, lines 57-64). Schioler teaches the application of a narrow bead of phosphorescent material (col. 3, lines 3-5). Schioler does not expressly teach an outline thickness of at least 0.30 cm. Outline thickness is a result effective variable, since it affects the visibility of the graphic under low light conditions. The discovery of an optimum value of a result effective variable is ordinarily within the ordinary skill in the art. It would have been obvious to one of ordinary skill in the art to modify Rodriguez to include an outline, as taught by Schioler, for the same reasons as described above for Claim 5 in paragraph 15. It would also be obvious to provide the outline with the thickness required to produce attractive effects.

17. For Claims 7, 21, and 23, Rodriguez does not expressly teach the photoluminescent graphic defining a photoluminescent graphic interior, nor a graphic attribute in the photoluminescent graphic interior. However, a graphic attribute in a photoluminescent graphic interior is well known in the art of photoluminescent graphics. Schioler confirms this and teaches a graphic attribute in a photoluminescent graphic interior (Figs. 1-2 and 4, and col. 4, lines 1-26). It would have been obvious to one of ordinary skill in the art to modify Rodriguez to include a graphic attribute in a photoluminescent graphic interior, as taught by Schioler, for the same reasons as described above for Claim 4 in paragraph 14.

18. For Claim 8, Rodriguez does not expressly teach the photoluminescent graphic being a silhouette. Schioler teaches a photoluminescent graphic being a silhouette, as described above for Claim 4 in paragraph 14. Schioler also teaches a graphic attribute

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including non-photoluminescent portions within the photoluminescent graphic interior (Figs. 1-2 and 4 and col. 4, lines 1-26). It would have been obvious to one of ordinary skill in the art to modify Rodriguez to include the photoluminescent graphic being a silhouette and the graphic attribute including non-photoluminescent portions within the photoluminescent graphic interior, as taught by Schioler, for the same reasons as described above for Claim 4 in paragraph 14.

19. For Claim 14, Rodriguez does not expressly teach the photoluminescent graphic substantially overlapping the non-photoluminescent graphic. However, having a photoluminescent graphic substantially overlap a non-photoluminescent graphic is well known in the art of photoluminescent graphics. Schioler confirms this and teaches a photoluminescent graphic substantially overlapping a non-photoluminescent graphic (col. 3, lines 34-44 and col. 4, lines 1-8). It would have been obvious to one of ordinary skill in the art to have a photoluminescent graphic substantially overlap a non-photoluminescent graphic, as taught by Schioler, for the same reasons as described above for Claim 4 in paragraph 14.

20. For Claim 15, Rodriguez does not expressly teach the photoluminescent graphic being a silhouette. Schioler teaches a photoluminescent graphic being a silhouette of the non-photoluminescent graphic, as described above for Claim 4 in paragraph 14. It would have been obvious to one of ordinary skill in the art to modify Rodriguez to include the photoluminescent graphic being a silhouette, as taught by Schioler, for the same reasons as described above for Claim 4 in paragraph 14.

21. For Claim 16, Rodriguez does not expressly teach the photoluminescent graphic being an outline of the non-photoluminescent graphic. Schioler teaches the photoluminescent graphic being an outline of the non-photoluminescent graphic, as described above for Claim 5 in paragraph 15. It would have been obvious to one of ordinary skill in the art to modify Rodriguez to include the photoluminescent graphic being an outline of the non-photoluminescent graphic, as taught by Schioler, for the same reasons as described above for Claim 5 in paragraph 15.

22. For Claim 17, Rodriguez teaches the photoluminescent graphic being independent of the non-photoluminescent graphic (paragraphs 38 and 40). Rodriguez teaches the graphics being provided in designs entertaining to small children (paragraph 5). Rodriguez does not expressly teach the photoluminescent graphic being a silhouette. Schioler teaches the photoluminescent graphic being a silhouette, as described above for Claim 4 in paragraph 14. Schioler teaches the graphics being provided in designs entertaining to children (col. 1, lines 5-13, and col. 4, lines 1-26). Schioler does not expressly teach the silhouette being independent of the non-photoluminescent graphic. Applicant's specification does not disclose that such a configuration serves any stated purpose not served by the other disclosed designs, or solves any particular problem. One of ordinary skill in the art, furthermore, would have expected Applicant's invention to perform equally well in entertaining children as the designs taught by Rodriguez and Schioler. It would have been obvious to one of ordinary skill in the art at the time of the invention to modify Rodriguez to include various combinations of silhouettes and other graphics to entertain children.

Double Patenting

23. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

24. Claims 1-23 are provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over Claims 72-124 of copending Application No. 10/618,030. Although the conflicting claims are not identical, they are not patentably distinct from each other because the claims of the copending application include an absorbent article, a graphic with a non-phosphorescent material, and a phosphorescent material.

25. This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

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Conclusion

26. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. U.S. Patent No. 3,738,299 to Packler et al. shows application of phosphorescent material to fabric. U.S. Patent No. 5,960,471 to Burton shows a garment for a baby which includes photoluminescent designs. The remaining prior art references listed on the accompanying Form PTO-892 show the general state of the art.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Paula L. Craig whose telephone number is (571)272-5964. The examiner can normally be reached on 8:30AM-5:00PM M-F.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tanya Zalukaeva can be reached on (571)272-1115. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Paula L Craig
Examiner
Art Unit 3761

PLC

TATYANA ZALUKAEVA
TEMPORARY PRIMARY EXAMINER

